IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10906 of 1998

with
CIVIL APPLICATION NO. 10463 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUDHIRBHAI RANCHHODBHAI TRIPATHI
Versus
BHANUSHANKER PRANSHANKER JANI

Appearance:
MR DK NAKRANI for Petitioner
MR BJ JADEJA for Respondent No. 1
DELETED for Respondent No. 3, 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/06/2000

ORAL JUDGEMENT

1. Civil Application No. 10463 of 1999 was on board

today for interim relief. However, at the joint request of both the parties, the main SCA is taken on merits having regard to the facts.

2. The petitioner is agitated by the order passed by the Gujarat Revenue Tribunal (`GRT' for short) in Application No.TEN /AK/3/98 on 13.11.1998. That appeal was preferred by the present petitioner challenging the order of the Joint Charity Commissioner, Rajkot in Application No. 36/23/97 dated 18.9.1997. By that order, the Joint Charity Commissioner had approved the application of Mundra Giri Narayan Brahman Gnati Trust under section 36 of the Bombay Public Trusts Act, and approved sale of certain properties of the trust for Rs. 7,05,000/- to one Jayendra Devchand Zinzuwadia, respondent No. 2 herein. The petitioner approached GRT at a very late stage and there was delay of 157 days in preferring the appeal. GRT was pleased not to condone delay and the appeal was,therefore, dismissed as time barred. Being agitated by the said order, the present petition is preferred.

3. Mr Nakrani has placed reliance on the decision of the Apex Court in N.Balakrishnan vs. M. Krishnamurthy, (1998) 7 SCC 123 and submitted that the court should take liberal approach. He submitted that the father of the petitioner had expired. The petitioner was,therefore, required to go to Gaya for performing post-religious rites. Thereafter, he was required to go to Bombay for personal work and after returning from Bombay, he had immediately approached his advocate who in turn applied for a certified copy and on getting the certified copy. appeal was preferred. This aspect has not been considered by the learned Member of the GRT and,therefore, the petition may be allowed.

4. Mr.Jadeja appearing for the respondent trust opposed this petition vehemently. He submitted that it is the discretion of the court whether to condone delay or not and delay may be condoned if it is reasonably explained by the party concerned. In the instant case, there is gross inaction on the part of the petitioner and the learned member of the GRT was justified in not condoning delay. Petition may,therefore, be dismissed.

5. Having regard to the aforesaid contentions, the law settled, as it stands, is that while condoning delay, the court should ordinarily adopt a liberal approach. At the same time, the party concerned should tender reasonable explanation for delay caused in approaching

the authority concerned. In the instant case, it is not in dispute that the father of the petitioner had expired. Upon death of his father, he was required to go to Gaya and had in fact gone to Gaya. After returning from Gaya, he was required to go to Bombay for some work and after returning therefrom,he has taken steps to pursue the litigation. The petitioner has, ofcourse, not been able to explain delay on day to day basis.At times,it may not always be possible so to do having regard to hectic life and other social exigencies. Under the circumstances, this court is inclined to accept the version given by the petitioner for approaching GRT a bit late. That delay, if condoned, will help the cause of justice , as the dispute between the parties would be decided on merits. This court is,therefore, inclined to condone delay and remand the matter to GRT for deciding the appeal of the petitioner on merits. However, having regard to the facts of the case, particularly the nature of explanation tendered and extent of its reasonableness,this court is of the view that the respondent trust need not be penalised by incurring of expenditure for the litigation that it will have to undergo once again. This will have to be compensated by the petitioner by paying cost. This cost may be reasonably assessed at Rs.5,000/-. The petitioner shall pay this amount to respondent No.1 trust within four weeks from today.

6. Petition is,therefore, allowed. The order of the GRT in appeal No. AK/3/98, dated 13/11/1998 is hereby quashed and set aside.The matter is remanded to GRT for deciding the appeal afresh on merits. The matter shall be proceeded with only upon proof of payment of cost. Rule made absolute. Status quo in respect of the property regarding construction to be maintained for a period of six weeks from today. Further orders to be obtained by the party concerned from the GRT.

7. In view of the order passed in the main matter, no orders on the Civil Application.

(A. L.Dave, J.)

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